

FILED

JUL 17 1984

ALEXANDER L STEVENS.

CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

COASTAL GEORGIA AUDUBON SOCIETY,

Petitioner,

v.

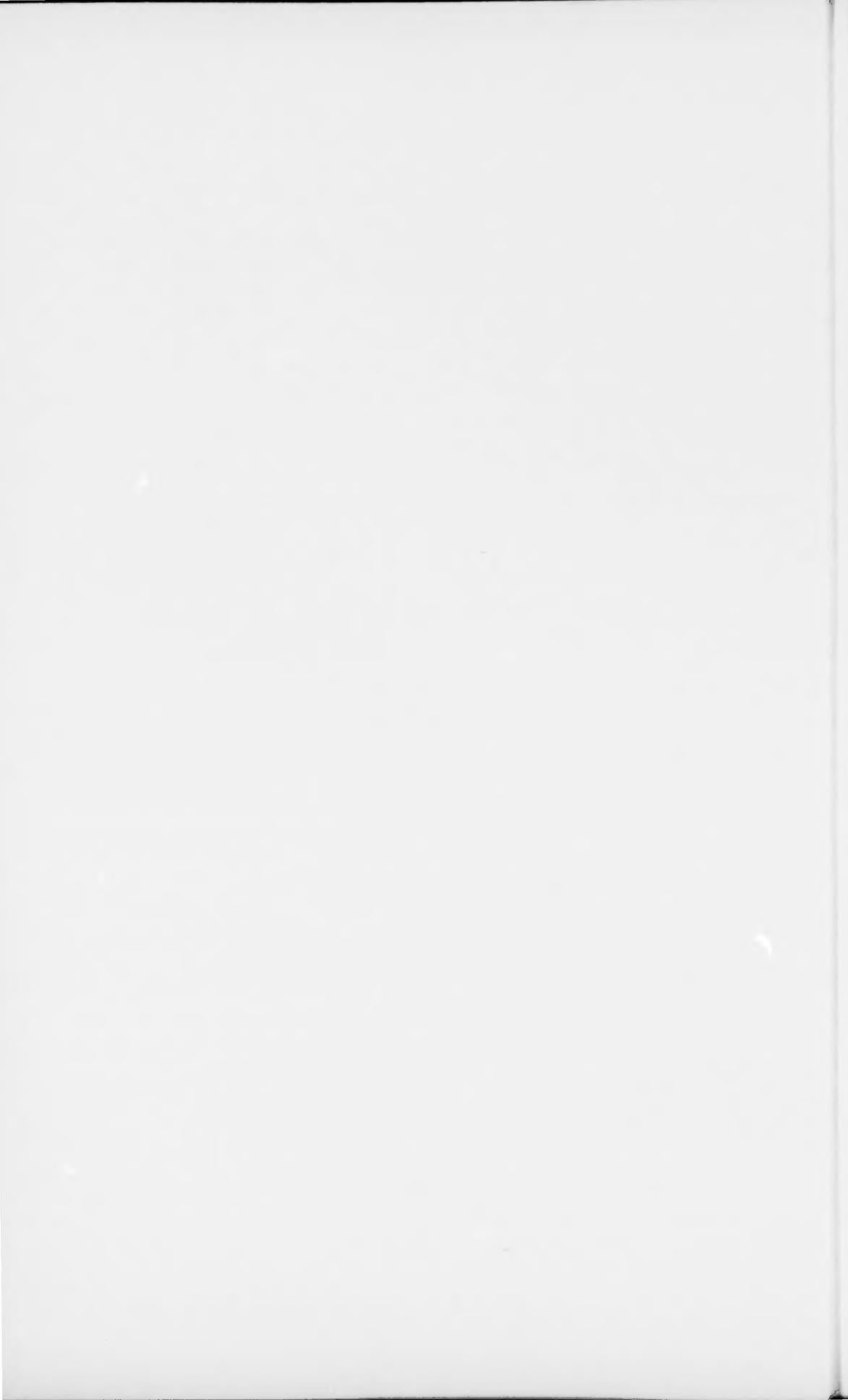
MIKE P. STURDIVANT, EARLE F. JONES and SHORE
ASSISTANCE COMMITTEE of the DEPARTMENT OF
NATURAL RESOURCES of the STATE OF GEORGIA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

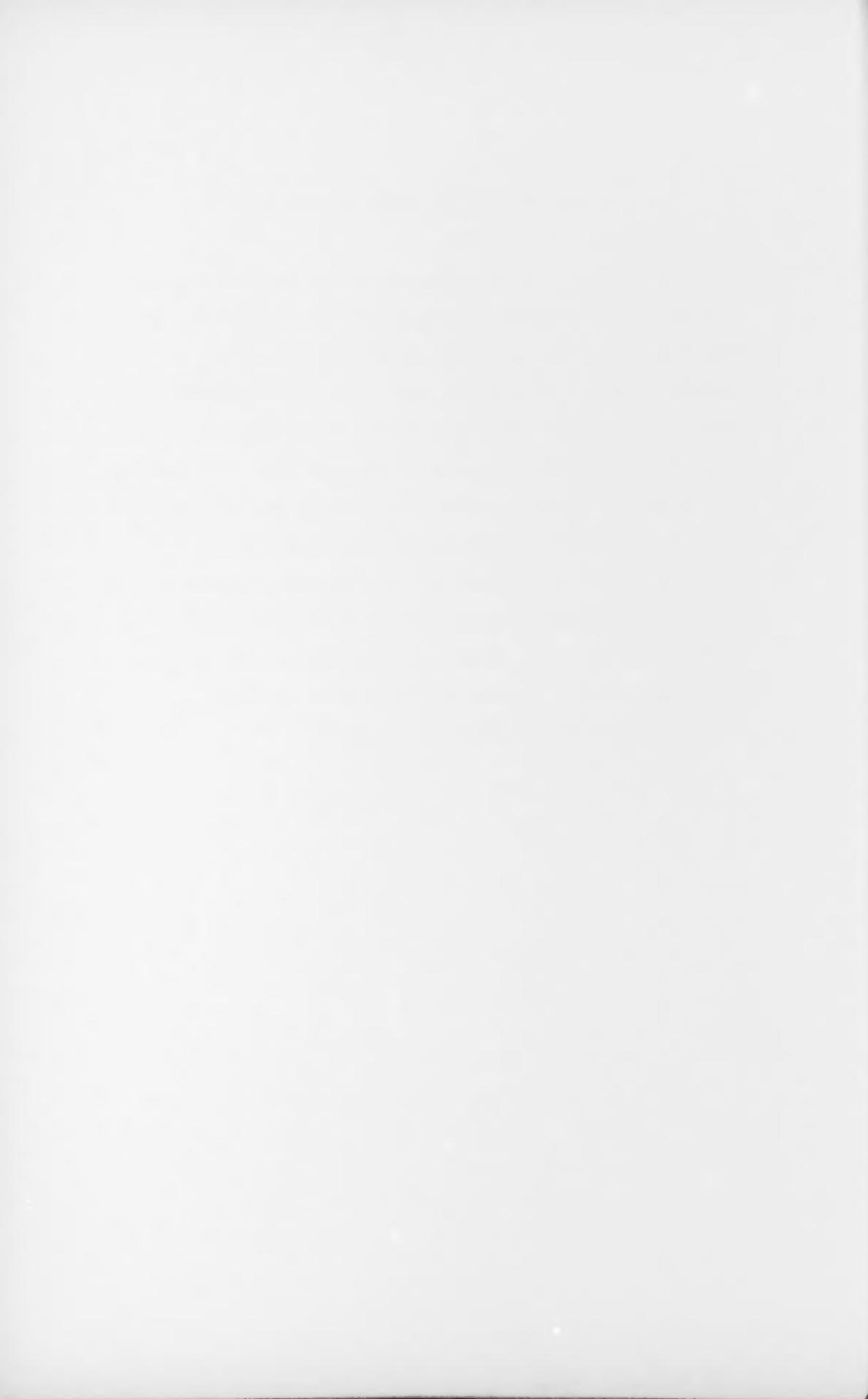
MORETON ROLLESTON, J.P.
2604 First National Bank Twr.
Atlanta, Georgia 30383
(404) 658-1228

Attorney for Petitioner



QUESTIONS PRESENTED FOR REVIEW

Where the Georgia Legislature has by statute conferred upon Audubon the RIGHT to appeal to the Supreme Court of Georgia under the Georgia Administrative Procedure Act, can the Supreme Court of Georgia deny the right of appeal by requiring Audubon to file a request for permission to appeal, thereby converting the right of appeal to a discretionary permission to appeal; or in the alternative is such action by the Supreme Court of Georgia in violation of due process guaranteed by the Georgia Constitution as well as the Fifth and Fourteenth Amendments to the Constitution of the United States?



NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

COASTAL GEORGIA AUDUBON SOCIETY,

Petitioner,

v.

MIKE P. STURDIVANT, EARLE F.
JONES and SHORE ASSISTANCE
COMMITTEE of the DEPARTMENT OF
NATURAL RESOURCES of the STATE
OF GEORGIA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF GEORGIA

Petitioner, Coastal Georgia Audubon Society,
respectfully prays that a writ of certiorari issue
to review the judgment of the Supreme Court of
Georgia entered in this case on April 18, 1984.



OPINION BELOW

The opinion of the Supreme Court of Georgia has not been reported. The entire opinion reads as follows:

"It appearing that the appellant failed to file an application for discretionary appeal as required by OCGA §5-6-35, it is ordered that this appeal be hereby dismissed."

JURISDICTION

The opinion of the Supreme Court of Georgia was issued and entered on April 18, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

STATUTES INVOLVED

The Official Code of Georgia Annotated, Section 50-13-20 provides as follows:

"An aggrieved party may obtain a review of any final judgment of the superior court under this chapter by the Court of Appeals or the Supreme Court, as provided by law."



Under O.C.G.A. 5-6-35 (f), the Supreme Court may deny an appeal from a state administrative agency.

STATEMENT OF THE CASE

The Georgia Department of Natural Resources granted a permit to a developer to build 47 condominium units on the beach at St. Simons Island, Georgia in an area which even the staff of the Department of Natural Resources described as "high risk, unstable, unpredictable, mobile and fragile environment". The land upon which the condominiums were permitted was under the ocean just a few years ago and is now accreted land.

Audubon appealed the decision granting the permit to build the condominiums as provided under Georgia law. The ~~last~~ appeal was from Glynn Superior Court to the Supreme Court of Georgia. Said Supreme Court ruled that Audubon did not have the right to appeal but only had the right to request permission which could be withheld.

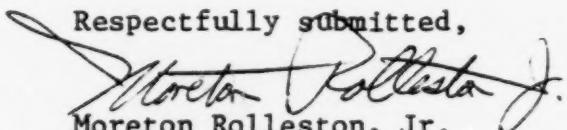
We contend that the opinion of the Supreme Court of Georgia violates the rights of due process of Audubon.



The substantive question involved will establish the rules by which construction may be accomplished on all the beaches of Georgia. It is important to Audubon and to all the citizens of the State of Georgia that such construction rules and directives for the use of the beach be reviewed by this Court.

We urge the Court to grant this writ of certiorari and to afford Audubon the opportunity to argue by brief and orally this case in detail.

Respectfully submitted,


Moreton Rolleston, Jr.
Attorney for Petitioner

2604 First National Bank Tower
Atlanta, Georgia 30383
404/ 658-1228

APPENDIX

APPENDIX A

OPINION OF THE SUPREME COURT OF GEORGIA

COASTAL GEORGIA AUDUBON SOCIETY

v.

MIKE P. STURDIVANT, EARLE F. JONES
AND SHORE ASSISTANCE COMMITTEE OF
THE DEPARTMENT OF NATURAL RESOURCES
OF THE STATE OF GEORGIA

Opinion filed April 18, 1984,
Not Reported at this time.

"It appearing that the appellant
failed to file an application for dis-
cretionary appeal as required by OCGA §5-
6-35, it is ordered that this appeal be
hereby dismissed."



APPENDIX B

IN THE SUPERIOR COURT FOR GLYNN COUNTY
STATE OF GEORGIA

COASTAL GEORGIA AUDUBON SOCIETY,
Appellant

v.

MIKE P. STURDIVANT, EARLE F.
JONES, and SHORE ASSISTANCE
COMMITTEE OF THE DEPARTMENT OF
NATURAL RESOURCES OF THE STATE
OF GEORGIA,

Appellees.

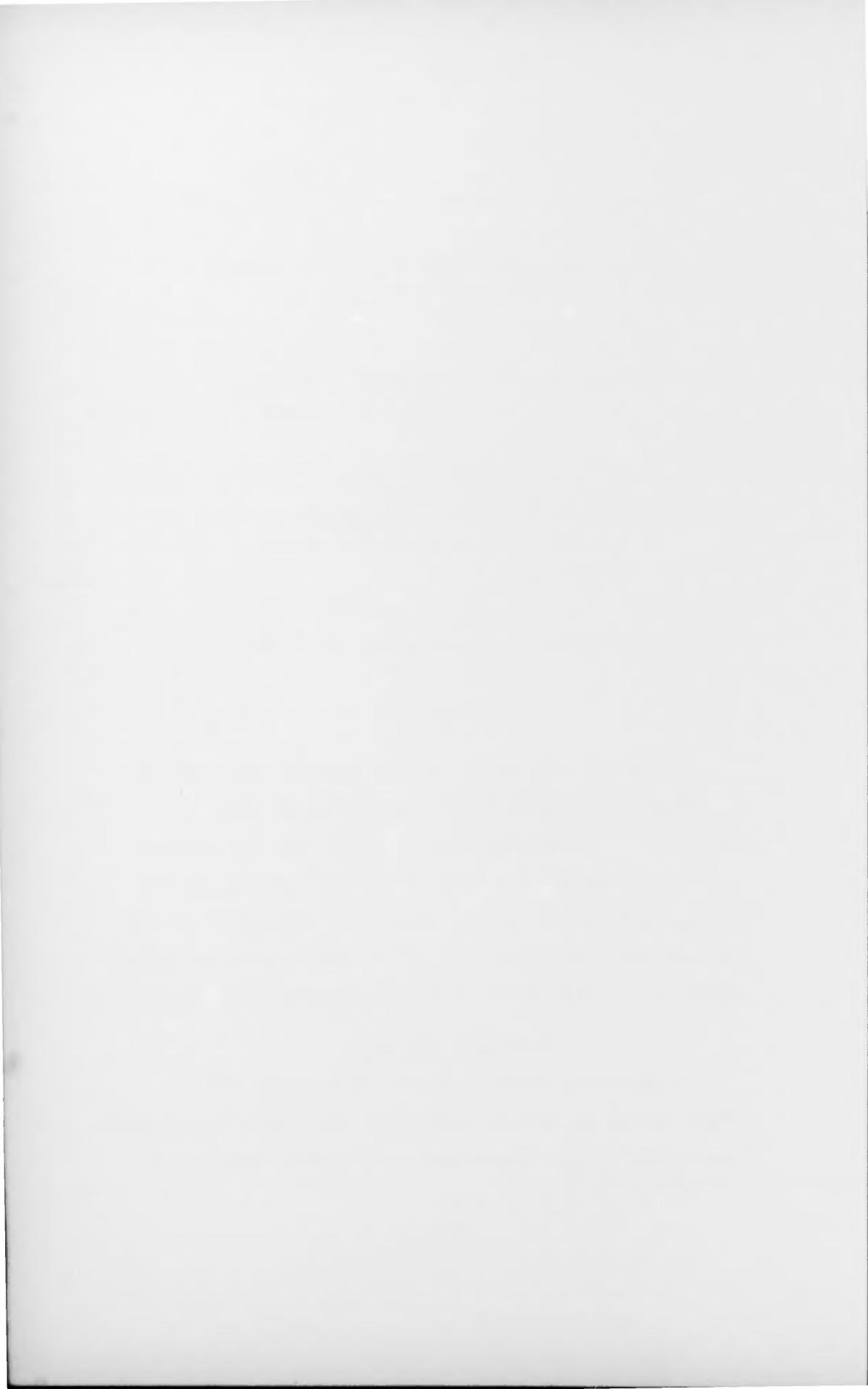
Opinion filed December 22, 1983

ORDER

The above captioned matter having come before
the Court on appeal from a decision of the
Administrative Review Committee of the Department
of Natural Resources, and after due consideration
of the record and of the arguments advanced at the
hearing held November 23, 1983, the Court herewith
makes its Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

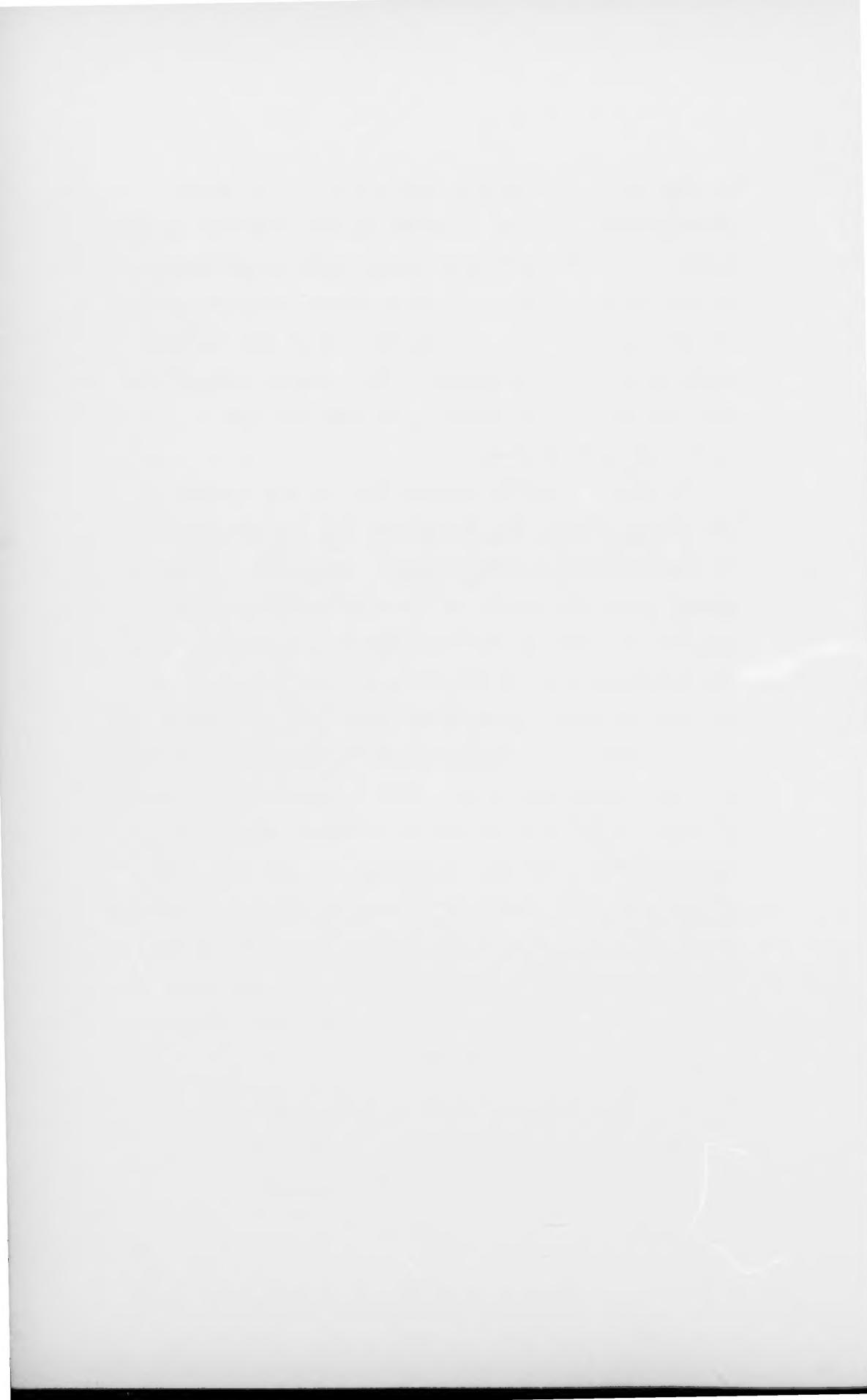
On April 5, 1982, Messrs. Sturdivant and
Jones filed an application with the Shore Assistance
Committee of the Department of Natural Resources



of the State of Georgia for a permit to build condominiums on land located on St. Simons' Island, Georgia. Jones and Sturdivant were named therein as the Applicants. Richard Tucker was designated as the 'Applicant's authorized agent for permit application coordination.' Mr. Tucker signed the application in the space provided for the Applicant's signature.

On May 11, 1982, Permit No. 74 was issued by the Shore Assistance Committee for the construction of the proposed condominiums. Appellant filed an appeal with the Board of Natural Resources who appointed James B. Talley, Executive Assistant to the Commissioner of the DNR, as Hearing Officer. On June 8, 1983, Hearing Officer Talley issued his Initial Decision upholding the issuance of Permit No. 74. Appellant then filed a Petition for Review of Hearing Officer Talley's decision with the Administrative Review Committee of the DNR. On August 4, 1983, the Administrative Review Committee affirmed the decision of Hearing Officer Talley, whereupon Appellant has appealed that decision to this Court pursuant to O.C.G.A. Section 50-13-19. Appellant enumerates as error:

1. That Hearing Officer Talley should have recused himself upon Appellant's properly made Motion to Disqualify;



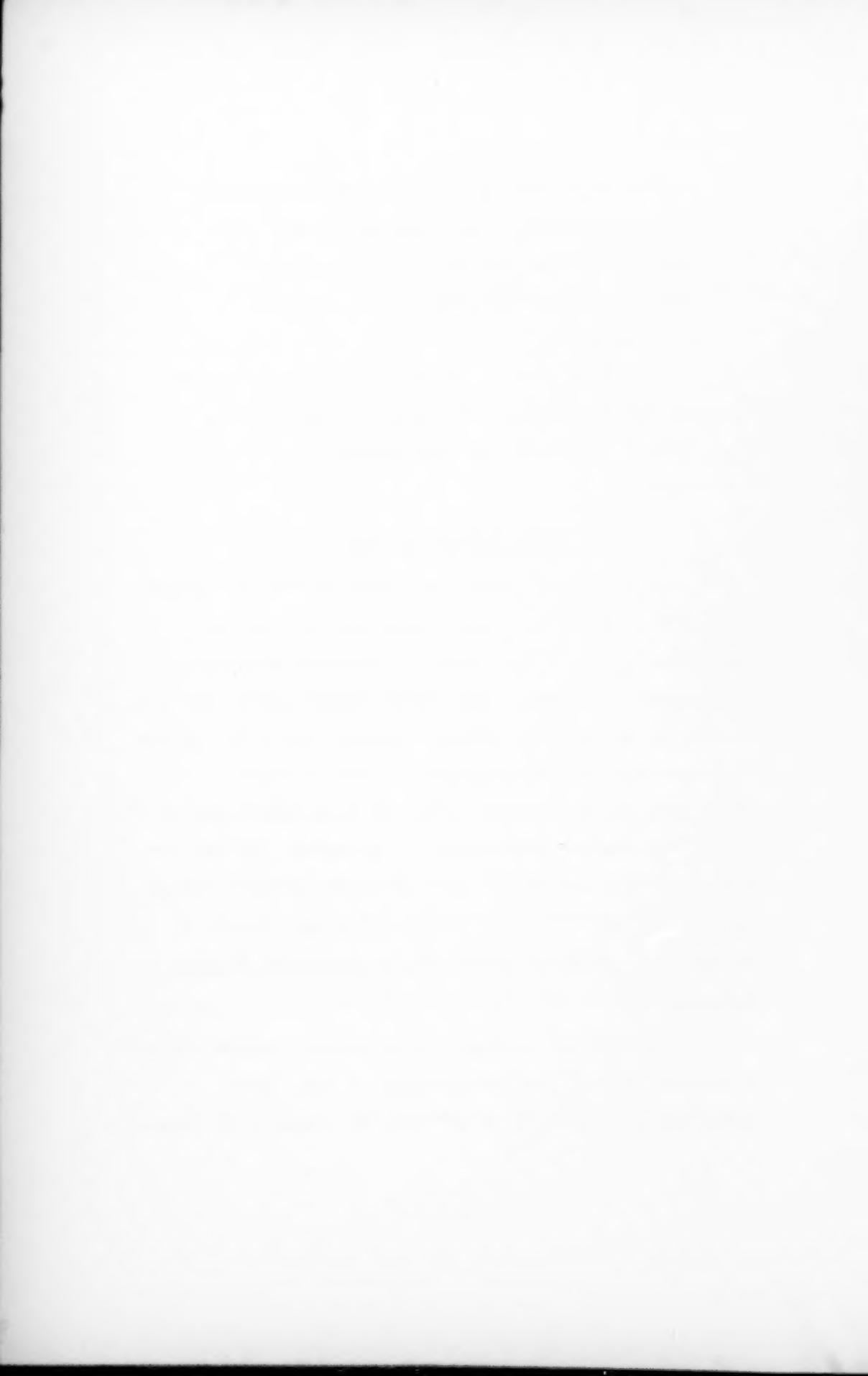
2. That the application by Appellees to the Committee was improperly and unlawfully filed and that, as a result, the permit issued thereon is without effect; and,

3. That the decision of Hearing Officer Talley upholding the permits issuance is contrary to law and the weight of the evidence.

CONCLUSIONS OF LAW

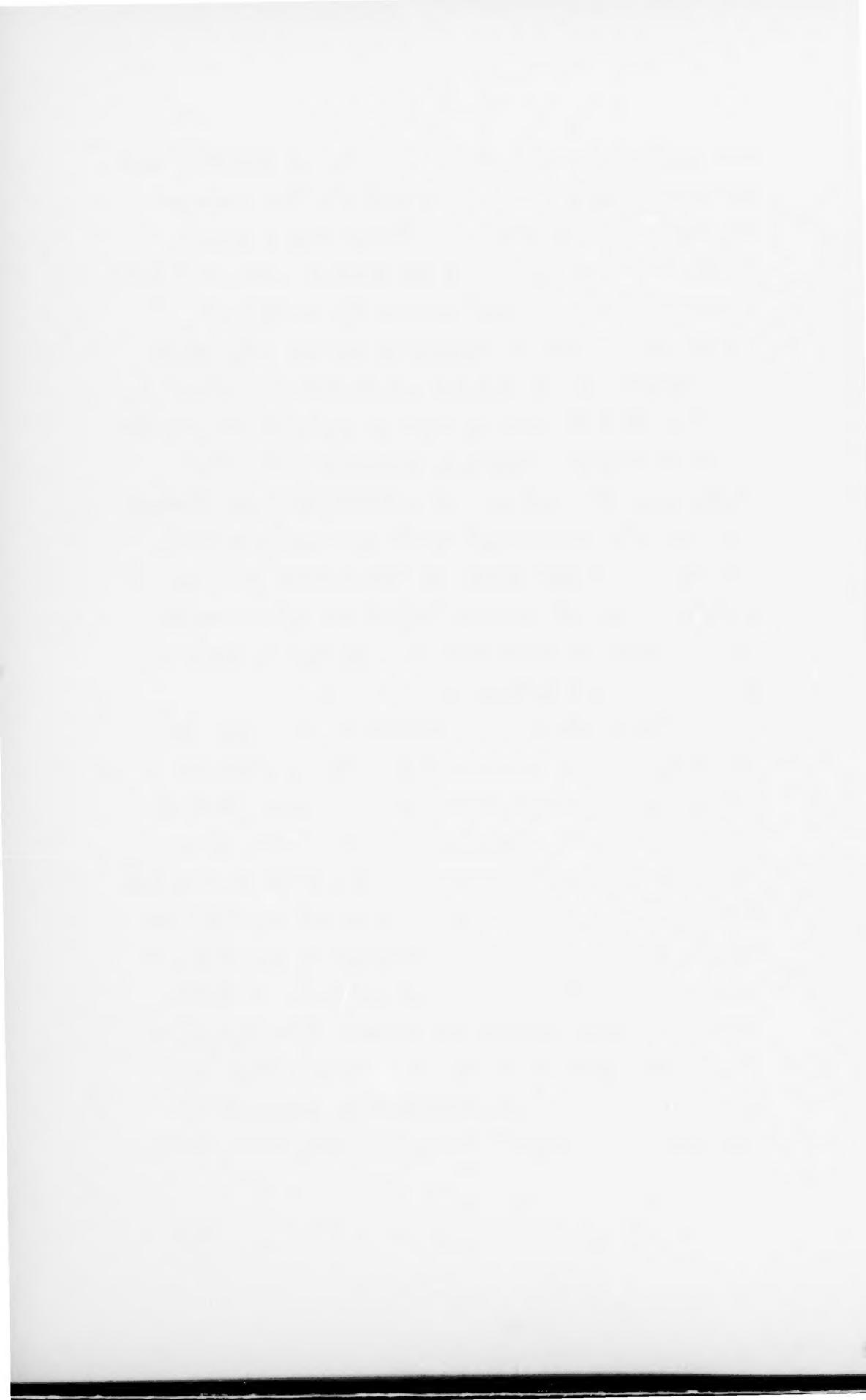
1. Appellant's Motion to Disqualify was based upon the contention that James Talley, as an Employee of the Department of Natural Resources, could not act freely and impartially under the law inasmuch as Hearing Officer Talley would be called upon to review the decision of his alleged superior Joe D. Tanner, who was also Chairman of the Shore Assistance Committee. However, the Motion was properly denied by said hearing officer based on the decision of the Georgia Supreme Court in Department of Transportation v. Del-Cook Timber Company, Inc., 248 Ga. 734 (1982).

2. Appellant contends the verbal authorization given by one of the Permittees to the Shore Assistance Committee staff for Mr. Tucker to sign



the application for the Permittees (T.282-287) was an insufficient grant of agency for the purpose of signing said application. Though the Court is mindful of the Agent's equal dignity rule, O.C.G.A. Section 10-6-2, an application for a Shore Assistance Committee permit is not an instrument falling within the Statute of Frauds, O.C.G.A., Section 13-5-30, nor is such an application required to be signed. O.C.G.A. Section 12-5-127. Therefore, as noted on the application, Mr. Tucker was the duly authorized agent for the Permittee and the Permittees were the applicants for the permit. That Mr. Tucker signed the application in the space provided for the applicants comports with the aforementioned grant of agency.

3. Here the Society contends: (A) That the Shore Assistance Act prohibits the building of any structure on the sand dunes or other fragile sand area in the sand-sharing system and, alternatively (B) that the intitial decision of Hearing Officer Talley is contrary to law and against the weight of the evidence. Inasmuch as O.C.G.A. Section 12-5-238 (c) provides minimum standards for development within the dynamic dune field, it cannot be argued that the General Assembly, in enacting the Shore Assistance Act, intended to prohibit all construction within that area. Under



Code Section 50-13-19, the Court is bound by the decision of the Department of Natural Resources if said decision is substantiated by any evidence on the record. After consideration of the entire record, the Court finds the DNR's decision to be amply supported.

ACCORDINGLY, the Decision of the Department of Natural Resources is affirmed in all respects.

SO ORDERED, this the 21st day of December, 1983.

A. BLENN TAYLOR, JR.,
JUDGE, SUPERIOR COURTS
BRUNSWICK JUDICIAL CIRCUIT

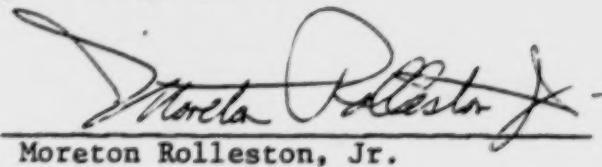
CERTIFICATE OF SERVICE

This is to certify that I have this day served copies of the foregoing "Petition for a Writ of Certiorari to the Supreme Court of Georgia" upon counsel for all parties by placing copies in the United States Mail, postage prepaid, properly addressed, as follows:

Mrs. Patricia Barmeyer
Assistant Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

Mr. Tom Lee
P.O. Box 1394
Brunswick, Georgia 31520

This 25th day of July, 1984.



Moreton Rolleston, Jr.